

1 and not about how much bandwidth was  
2 available. And so, really, it was easier to  
3 get distribution than it is now.

4 Q What about analog distribution?  
5 Was it easier to get analog distribution?

6 A Dramatically, yes.

7 Q So you oversee Golf and Versus.  
8 Would you consider -- are you familiar with  
9 the NFL Network?

10 A I am, yes.

11 Q Do you consider NFL Network a  
12 competitor of Golf or Versus?

13 A No, I don't.

14 Q And why is that?

15 A Well, we don't -- first of all,  
16 "competitor" is kind of a pejorative word, and  
17 we don't really sit around thinking about who  
18 is a competitor in an abstract sense. So from  
19 my perspective, a competitor to me means  
20 somebody who is competing with me for  
21 advertising revenue or one of my networks for  
22 advertising revenue.

1           And we -- in my experience with  
2 the Golf Channel and Versus in the four years  
3 I have been at Comcast, we have never run  
4 across any advertising agency or advertiser  
5 who said they were trying to decide on an ad  
6 buy between us and the NFL Network. It is  
7 really a wide variety of other networks, not  
8 the NFL Network.

9           Q       And in that context of when you  
10 are trying to get advertising, what other  
11 networks are identified as competitors of Golf  
12 and Versus for advertising dollars?

13          A       Well, for Versus and Golf Channel,  
14 we primarily sell to men 25 to 54. Golf  
15 Channel we run across CNBC all the time, and  
16 other financial news networks, you know, like  
17 CNN and Fox News Channel. Versus we also run  
18 across those networks, but also ESPN, USA,  
19 TNT, some of the other male-skewing older  
20 networks.

21          Q       So the competitors aren't limited  
22 to sports networks.

1           A       No, not at all.

2           Q       Now, I am trying to move through  
3 this very quickly. There was a time when  
4 Versus was trying to obtain a package of NFL  
5 games, is that correct?

6           A       That is correct, yes.

7           Q       And it is in fact the same eight-  
8 game package that is now on the NFL Network?

9           A       I believe so. I am not sure it is  
10 exactly the same, but it is relatively the  
11 same, yes.

12          Q       Were you involved in the  
13 negotiation for Versus to try to get those  
14 games?

15          A       I was. I think the negotiation  
16 started before I joined Comcast, but I was  
17 involved once I got there, yes.

18          Q       What was your role once you became  
19 involved?

20          A       I was really the OLN or the Versus  
21 representative, so my role was to put together  
22 the plans for versus and how those games would

1 fit within Versus, and also to contribute to  
2 how much we should bid and what package of  
3 value we should offer for that.

4       Q       And as part of that planning for  
5 the addition of these games on Versus, did you  
6 model or propose pricing that you would seek  
7 from the market?

8       A       Yes, definitely.

9       Q       Okay. And was that pricing based  
10 on the value of the NFL games?

11      A       Pricing was based on -- the NFL  
12 games were a component of the pricing, but  
13 they were based on a wide variety of other  
14 factors as well.

15      Q       What were the other factors on  
16 which the pricing was based?

17      A       Well, I would probably put it in  
18 three buckets. I think the first bucket was  
19 we had a lot of moment at the time we were  
20 bidding with the network OLN, and a lot of  
21 ratings growth since when we first got it  
22 distributed. So one package was kind of all

1 the stuff we had, you know, of which there was  
2 a lot of new things that had been added to the  
3 network since it was first launched, like NHL  
4 Stanley Cup, and --

5 JUDGE SIPPEL: Give us a bucket.  
6 What bucket are you talking about? Give us a  
7 bucket.

8 THE WITNESS: Bucket one is the  
9 stuff we already had.

10 JUDGE SIPPEL: Okay. So that was  
11 already on -- what was it called then? It was  
12 --

13 THE WITNESS: It was OLN, yes, at  
14 the time.

15 JUDGE SIPPEL: And that had to be  
16 -- okay. We have a general idea what that --

17 THE WITNESS: Hockey, stuff like  
18 that.

19 JUDGE SIPPEL: Right.

20 THE WITNESS: Bucket two would be  
21 NFL games that we were trying to acquire.

22 JUDGE SIPPEL: Okay.

1           THE WITNESS: Which was really  
2 going to be a catalyst for the rest. And  
3 then, in all of our plans we had intended to  
4 go spend a lot more money on bucket three,  
5 which would include, we hoped, two other  
6 marquee sports properties, like NASCAR or  
7 Major League Baseball.

8           JUDGE SIPPEL: Or Major League or  
9 and/or or --

10          THE WITNESS: And/or. We had -- I  
11 think in most of our models we allocated at  
12 least \$200 million, so hopefully that would be  
13 sufficient to get at least two other marquee  
14 packages.

15          JUDGE SIPPEL: And a marquee  
16 package would be Major League Baseball, and  
17 what would be another one?

18          THE WITNESS: NASCAR.

19          JUDGE SIPPEL: NASCAR, okay.

20          THE WITNESS: ACC basketball, SCC  
21 football.

22          JUDGE SIPPEL: That is college,

1 right?

2 THE WITNESS: College football,

3 yes.

4 MR. PEREZ-MARQUES: Your Honor,

5 may I appropriate to distribute an exhibit?

6 JUDGE SIPPEL: You may. So those

7 are the three buckets.

8 THE WITNESS: Yes, sir.

9 JUDGE SIPPEL: And that is what

10 you were looking at when you were negotiating

11 price or -- I mean, at what point was this

12 important in terms of taking into

13 consideration --

14 THE WITNESS: When we were putting

15 together our plans which would determine what

16 we would bid for the NFL games. We put

17 together a full financial model for OLN and --

18 JUDGE SIPPEL: As a business plan.

19 THE WITNESS: As a business plan,

20 yes, sir.

21 MR. PEREZ-MARQUES: If I may, Your

22 Honor?

1 JUDGE SIPPEL: Yes, please do.

2 Yes.

3 BY MR. PEREZ-MARQUES:

4 Q Were you confident that you could  
5 achieve that plan pricing in the marketplace?

6 A I think "confident" would be the  
7 wrong word. I mean, we took our best guess,  
8 but I think there was a lot of people on my  
9 team that were -- that felt there was a lot of  
10 risk to the pricing, yes.

11 Q Okay. Among your team, what were  
12 the views of -- were there specific  
13 distributors that you were particularly  
14 concerned about being able to achieve  
15 distribution with?

16 A You know, all of them were a risk.  
17 But I think as you -- as you move down, some  
18 distributors tend to be even harder to get  
19 distribution than others. EchoStar,  
20 Cablevision tends to be very difficult to get  
21 distribution, Charter I think we were worried  
22 about. Yes, there were some distributors that



1 we were more concerned about.

2           Q       Did you ever try to assign a  
3 probability to specific distributors as to  
4 whether you would be able to achieve your  
5 pricing with those particular distributors?

6           A       I think my team did at various  
7 times, yes.

8                   MR. PEREZ-MARQUES: Your Honor, I  
9 would like to show the witness what -- an  
10 exhibit the NFL -- or the Enterprise has  
11 submitted. It is Enterprise's Exhibit 159.

12                   JUDGE SIPPEL: Is it in? Is it in  
13 the record? 159?

14                   MR. PEREZ-MARQUES: It is in the  
15 record. It has been admitted.

16                   JUDGE SIPPEL: Do you have copies?

17                   MR. PEREZ-MARQUES: I only have  
18 one copy.

19                   JUDGE SIPPEL: What is the number,  
20 159?

21                   MR. PEREZ-MARQUES: 159. I  
22 apologize, Your Honor. I will give this copy

1 to the witness. It is Enterprise's 159.

2 JUDGE SIPPEL: 159.

3 MR. PEREZ-MARQUES: It is a one-  
4 page document, well, a two-page document  
5 headed at the top "OLN with NFL."

6 JUDGE SIPPEL: I only got one  
7 page. Oh, it is two-sided. Go ahead. Okay.  
8 Yes, sir.

9 BY MR. PEREZ-MARQUES:

10 Q Now, Mr. Shell --

11 JUDGE SIPPEL: Do you have a copy,  
12 sir?

13 THE WITNESS: I do. Yes.

14 JUDGE SIPPEL: Okay.

15 BY MR. PEREZ-MARQUES:

16 Q Do you recognize this document?

17 A I do recognize the data, yes.

18 Q And what do you recognize it to  
19 be?

20 A I believe my affiliate sales team  
21 put together a number of different plans and  
22 analysis to try to figure out a strategy to

1 sell Versus on the renewals to the market.

2 And I believe this was a -- some of the detail  
3 of one of the plans that they put together for  
4 one of the cases of OLN.

5 Q Okay. And at the top do you see  
6 it says, "Here is what we previously provided  
7 to the corp dev team," which I assume means  
8 corporate development, and then there is a  
9 table. What does that reflect?

10 A I think they were looking at two  
11 different cases -- one case where the NFL  
12 games were available exclusively in the local  
13 market, so there would be no over-the-air game  
14 simulcast, and the other one would be where,  
15 consistent with past practice, there was also  
16 an over-the-air simulcast of local games.

17 And they are trying to -- this  
18 appears to be developing assumptions from the  
19 business plan they were talking about before,  
20 trying to figure out which distributors would  
21 carry when, and build up the building blocks  
22 for that financial plan.

1           Q       And the percentages in this chart  
2 represent the target penetration rates that  
3 you were going to see for each distributor, is  
4 that correct?

5           A       It appears to be, yes.

6           Q       Now, going under key issues, do  
7 you see there is a paragraph numbered one that  
8 says, "Forecast assuming OTA syndication," and  
9 then below that there is a list of  
10 distributors with a number next to each one.  
11 What does that reflect?

12          A       It appears to be that my affiliate  
13 team who prepared this was assigning a -- kind  
14 of a probability that each distributor would  
15 accept the rate card that we put in there.

16          Q       I'm sorry, Mr. Shell.

17                   Your Honor, are you --

18                 JUDGE SIPPEL: I am having trouble  
19 with the key issues. Where are you on this?

20                 MR. PEREZ-MARQUES: Just under the  
21 pricing chart, OLN stated rate.

22                 JUDGE SIPPEL: Oh, that is the

1 rate card?

2 MR. PEREZ-MARQUES: That is right.

3 JUDGE SIPPEL: Under the rate  
4 card?

5 MR. PEREZ-MARQUES: There is a --

6 JUDGE SIPPEL: Forecast assuming  
7 -- go ahead.

8 MR. PEREZ-MARQUES: Forecast  
9 assuming OTA syndication?

10 JUDGE SIPPEL: Yes. That is key  
11 issues?

12 MR. PEREZ-MARQUES: Exactly. And  
13 I am asking the witness to explain what the  
14 numbers next to each distributor reflect.

15 JUDGE SIPPEL: I see. Thank you  
16 very much. Okay.

17 BY MR. PEREZ-MARQUES:

18 Q Mr. Shell, go ahead. Sorry for  
19 the interruption.

20 A Right. Just to restate my answer,  
21 it looks -- first of all, I didn't prepare  
22 this. It was prepared by my affiliate team.

1 And I believe what this is is they were  
2 looking at the over-the-air syndication case  
3 and assigning a probability that each  
4 distributor would accept our pricing based on  
5 that case, with 10 being the highest and one  
6 being the lowest.

7 Q Is that what it reflects when it  
8 says 10 equals definitely, one equals  
9 absolutely not?

10 A That is -- it appears to me that  
11 that is what it implies, yes.

12 Q And so, for instance, for the  
13 distributor Charter, it assigns it a  
14 probability of two out of 10, a 20 percent  
15 chance.

16 A That is what they -- that is what  
17 their view was, yes.

18 MR. PEREZ-MARQUES: Thank you. No  
19 more questions, Your Honor.

20 JUDGE SIPPEL: Okay. Just hold on  
21 one minute now. You gave us the three  
22 buckets, and that had to do with -- that would

1 be the value to Comcast of this -- of this  
2 Enterprise, if you will. Is that right? I  
3 mean, that was --

4 THE WITNESS: No. I was looking  
5 at -- I was looking at a narrower case than  
6 Comcast. My job was just to look at it from  
7 a network perspective when we are --

8 JUDGE SIPPEL: Yes. But you had  
9 the three buckets in mind, right?

10 THE WITNESS: We had the three  
11 buckets in mind, yes, one of which we had  
12 already and two of which we were intending to  
13 get.

14 JUDGE SIPPEL: Yes, that is right.  
15 You had the first one, you had the OLN  
16 programming, obviously.

17 THE WITNESS: Yes.

18 JUDGE SIPPEL: Now, the NFLN, did  
19 -- the eight games, is that -- now, what about  
20 NFLN without the eight games, was that -- how  
21 does that fit in?

22 THE WITNESS: Well, we were just

1 bidding -- we weren't bidding -- nothing --  
2 when I was -- when I am looking at it from  
3 OLN's perspective, Outdoor Life Network's  
4 perspective, we were not bidding for anything  
5 related to the NFL Network at the time. All  
6 we were bidding for was the eight-game  
7 package.

8 JUDGE SIPPEL: The eight games.

9 THE WITNESS: Yes.

10 JUDGE SIPPEL: And these would be  
11 probably -- those would be plugged into this  
12 -- probably this -- I gather the sports, this  
13 exclusively sports bucket that you are talking  
14 about.

15 THE WITNESS: Yes.

16 JUDGE SIPPEL: MLB, NASCAR, but --

17 THE WITNESS: Yes.

18 JUDGE SIPPEL: But the football  
19 would be the first -- the eight games would be  
20 the first thing.

21 THE WITNESS: The next thing at we  
22 were going to acquire, yes.



1 JUDGE SIPPEL: I gotcha. But not  
2 for purposes of the NFLN, not for purposes of  
3 the network. You didn't really -- that was  
4 not of any interest to you, "you" being  
5 Comcast, at that time. Just the eight games.

6 THE WITNESS: Correct. There was  
7 a -- the way to look at it I think the best is  
8 there was an auctioneer selling the eight  
9 games, and there were a number of bidders for  
10 the eight games. We represented by Versus or  
11 OLN was one of the bidders, and I --  
12 presumably, NFL Network, NFLN, was another  
13 bidder. So my view was only looking at it  
14 from OLN's perspective, how much can we bid  
15 for these games.

16 JUDGE SIPPEL: Was there any other  
17 bidders besides -- that you had in mind at  
18 that time besides NFLN and yourself, and  
19 Comcast? Were there any others that you had  
20 in mind?

21 THE WITNESS: Well, the auctioneer  
22 would know better. They didn't tell us that

1 in the press there were a number of other  
2 people that were identified -- Fox and USA and  
3 Turner and other -- it was our understanding  
4 there were a number of bidders.

5 JUDGE SIPPEL: So there was kind  
6 of a silent auction going on there.

7 THE WITNESS: Yes.

8 JUDGE SIPPEL: Okay. I am sorry.  
9 Go ahead.

10 THE WITNESS: But the auctioneer  
11 won the auction.

12 JUDGE SIPPEL: Well, that --

13 THE WITNESS: Okay.

14 JUDGE SIPPEL: I am not going to  
15 ask you to explain that. I think it is self-  
16 evident.

17 Yes, sir. Mr. Schmidt?

18 MR. SCHMIDT: Yes, sir, Your  
19 Honor.

20 CROSS EXAMINATION

21 BY MR. SCHMIDT:

22 Q Let's stay with Exhibit 159 for a

1 minute. There was never a point in time when

2 --

3 JUDGE SIPPEL: Go ahead.

4 BY MR. SCHMIDT:

5 Q When Comcast said, "We have  
6 decided this deal doesn't work for us," in  
7 terms of bidding for the eight games, was  
8 there?

9 A No.

10 Q Comcast was in for the eight games  
11 right up until the time they were told by the  
12 NFL that the games were going to the NFL  
13 Network instead, right?

14 A Based on our bid, correct, yes.

15 Q And that is because Comcast  
16 thought that the games would improve Versus'  
17 programming, right?

18 A I think that was part of it, yes.  
19 But, yes, certainly.

20 Q It would help make Versus into a  
21 bigger, more successful channel?

22 A We believed it would serve -- it

1 would not only help our programming but serve  
2 was a catalyst for us to be a bigger, more  
3 successful channel, yes.

4 Q It would help you collect more  
5 licensing fees.

6 A In combination with lots of other  
7 programming, yes.

8 Q By itself it would help you  
9 collect more licensing fees, right?

10 A I don't we ever looked at the  
11 games just on itself. So I can't answer that  
12 question.

13 Q I asked you this in your  
14 deposition, and I said, "Sitting here today,  
15 based on your knowledge and your participation  
16 in those negotiations" --

17 MR. PEREZ-MARQUES: Page and line,  
18 Mr. Schmidt?

19 MR. SCHMIDT: Page 174, lines 5 to  
20 13.

21 BY MR. SCHMIDT:

22 Q "In your participation in those

1 negotiations, would it be your expectation  
2 that had Comcast -- had Versus secured the  
3 eight-game package and nothing else, that  
4 would have had a positive impact to some  
5 degree? And there may be a question as to  
6 what degree, but to some degree on its  
7 licensing revenue?" And you answered, "Yes,  
8 I think it would have." Is that correct?

9           A       That is correct, yes.

10          Q       It would have helped you get more  
11 subscribers, right?

12          A       I think marginally more  
13 subscribers. We were pretty well distributed  
14 already, so I think that wasn't a core part of  
15 our analysis, no.

16          Q       Let me read you 176, line 22, to  
17 177, line 2. I ask you, "One of the values of  
18 getting the eight-game package that you hoped  
19 to obtain was a net increase in  
20 subscribership?" You answered, "Yes." Is  
21 that right?

22                   MR. PEREZ-MARQUES: That is not

1 the entirety of his answer.

2 BY MR. SCHMIDT:

3 Q "Yes. I answered the previous  
4 question based on the eight-game package."

5 That was your entire answer?

6 A Yes. But the previous question  
7 you asked me was just the eight-game package.  
8 We felt the eight-game package would serve as  
9 a catalyst to get a lot of other things that  
10 would increase our distribution.

11 Q You projected increased ad revenue  
12 from having the eight-game package, correct?

13 A Yes.

14 Q Now, looking at Exhibit 159, do  
15 you see under key issue number 2, rate card?  
16 Are you with me?

17 A I am, yes.

18 Q "Reached the corporate development  
19 group, likely backed into the [REDACTED] rate  
20 card by figuring out what OLN would need to  
21 generate in revenue to cover the NFL rights  
22 fees," correct?

1           A       Yes.

2           Q       So is it your understanding that  
3 they generated those numbers by figuring out  
4 we are paying \$1.4 billion for these games, we  
5 need to figure out a surcharge that covers  
6 those rights fees?

7           A       I don't think it says "surcharge"  
8 on here now.

9           Q       What does the rate card cover?  
10 Maybe not -- let me reask the question. Is it  
11 your understanding that Comcast, the corporate  
12 development group -- that is the group within  
13 Comcast, right?

14          A       Correct, yes.

15          Q       That Comcast figured out this [REDACTED]  
16 [REDACTED] rate card by figuring out, how is  
17 Comcast going to make back the money it was  
18 going to pay for the eight games?

19          A       That seems to be what this says on  
20 here, yes.

21          Q       Okay. And then it says --

22                 JUDGE SIPPEL: When you say "on

1 here," you know, 159, is that the exhibit  
2 number?

3 THE WITNESS: Yes.

4 MR. SCHMIDT: Correct, yes.

5 BY MR. SCHMIDT:

6 Q You don't have any reason to  
7 question that that was accurate, do you?

8 A I am not in the corporate  
9 development group, but, no, I don't have any  
10 reason to question its accuracy.

11 Q When you talked about -- do you  
12 remember me deposing you, and me asking you if  
13 you ever came to the view that getting broad  
14 distribution of Versus with the eight-game  
15 package was unrealistic? Do you remember  
16 telling me that you never thought it was  
17 unrealistic?

18 A That is correct, yes.

19 Q Finishing up with Exhibit 159,  
20 when you look at the number, the four tasks as  
21 to who will and who will not carry Versus with  
22 the eight-game package -- well, first of all,



1 none of these forecasts ever caused Comcast to  
2 pull back its offer, did they?

3           A       No.

4           Q       Okay. This case is about Comcast.  
5 You understand that, right?

6           A       Yes.

7           Q       What was your prediction as to the  
8 likelihood that Comcast would carry Versus  
9 with the eight-game network paying the  
10 surcharge identified in this document?

11                   MR. PEREZ-MARQUES: Objection to  
12 form.

13                   MR. CARROLL: Your Honor?

14                   JUDGE SIPPEL: Yes?

15                   MR. CARROLL: The objection is  
16 the --

17                   MR. SCHMIDT: Your Honor, I --

18                   JUDGE SIPPEL: Wait. Let him make  
19 his statement.

20                   MR. CARROLL: The contract with  
21 the NFL required Comcast to carry the channel  
22 Versus. There was a legal requirement under

1 the bid that if we got the games we would have  
2 to carry it on Comcast. So the question makes  
3 no sense.

4 MR. SCHMIDT: Your Honor, first of  
5 all that is testimony. Second, I really think  
6 it is unfair that I am getting objections from  
7 multiple lawyers. But there should --

8 JUDGE SIPPEL: That is unfair, but  
9 I am -- that is under the control. What is  
10 your response to what Mr. Carroll said?

11 MR. SCHMIDT: That doesn't change  
12 the fact that that is what they were willing  
13 to do, that they were willing to pay that  
14 surcharge. That is all I am asking the  
15 witness. It is a fair question.

16 JUDGE SIPPEL: I think he is  
17 trying to lay a process here, a logical  
18 process for answering a series of questions  
19 that are related. I am going to permit the  
20 question. I overrule the objection. Go  
21 ahead.

22 BY MR. SCHMIDT: